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Attorneys for Defendant
THE REYNOLDS AND REYNOLDS COMPANY

ORIGINAL
FILED

07 JUN 18 PM 3:52

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIF.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

C07 03208 JL

Frederick H. Greenley,

Case No.

Plaintiff,

**NOTICE OF REMOVAL OF CIVIL
ACTION UNDER 28 U.S.C. SECTION
1441(B) [DIVERSITY]**

v.

The Reynolds & Reynolds Company, and
Does 1 through 20, inclusive,

Defendant.

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant The Reynolds and Reynolds Company (hereinafter "Defendant"), hereby removes the above-entitled action, Case No. CV028797, from the Superior Court of the State of California, County of San Mateo, to the United States District Court for the Northern District of California, pursuant to 28 U.S.C. §§ 1332(a)(1), 1441, and 1446.

I. JURISDICTION

1. The Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1). This case may be removed pursuant to 28 U.S.C. §§ 1441 and 1446 because it is a civil action in which the amount in controversy exceeds \$75,000, exclusive of interest and costs, and it is between citizens of different states, and no defendant is a citizen of the State of California.

Firmwide:82626214.1 046961.1012

Case Number: CIV 462679

NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. SECTIONS 1332(D) AND 1441(A)

II. GENERAL INFORMATION

2. On May 1, 2007, Plaintiff filed his Complaint for Damages, entitled "Frederick H. Greenley, Plaintiff, versus The Reynolds & Reynolds Company, and Does 1 through 20, inclusive, Defendants," Case Number CIV 462679, in the Superior Court of the State of California in and for the County of San Mateo.

3. In the Complaint, Plaintiff alleges that he was employed with Defendant and claims wrongful termination, retaliation for refusing to waive his rights under California law, violation of California Business and Professions Code sections 17200, et seq., and declaratory relief. A true and correct copy of the Complaint is attached hereto as Exhibit "A."

4. Defendant was served with a copy of said Complaint for Damages and a Summons for the said state court by letter to a corporate office pursuant to Code of Civil Procedure section 416.10. Pursuant to Code of Civil Procedure section 415.40, service by mail is deemed complete on the 10th day after such mailing. As such, the summons and complaint was served on May 17, 2007. A copy of the summons and letter to the corporate officer dated May 7, 2007 is attached hereto as Exhibit "B."

5. On June 18, 2007, Defendant filed a "General Denial and Affirmative Defenses to Plaintiff's Unverified Complaint" ("Answer") with the San Mateo County Superior Court. A copy of Defendant's Answer is attached hereto as Exhibit "C." This document, together with Exhibits A and B, represents the entire state court file in this matter.

6. There is no other defendant, other than The Reynolds and Reynolds Company, named in the Complaint.

7. This Notice to Federal Court of Removal of Civil Action is timely since the complaint and summons were served less than thirty days before the instant notice of removal.

8. This action may be removed to this Court pursuant to 28 U.S.C. § 1441(b) because it is a civil action with a diversity of citizenship pursuant to 28 U.S.C. § 1332(a). This case alleges a civil action between citizens of different states and seeks more than \$75,000 in damages, exclusive of interest and costs.

III. DIVERSITY

9. At the time that this action was commenced in San Mateo County Superior Court, Plaintiff was, and still is, a citizen of the State of California.

10. At the time that this action was commenced in state court, Defendant was, and still is, an Ohio corporation with its principal place of business in Kettering, Ohio. Thus, Defendant is not a citizen of the State of California.

11. No other party has been named or has been served as of the date of this Removal.

12. The Defendants designated as DOES 1 through 20 are fictitious Defendants and are not parties to this action. Unnamed Defendants sued as Does are not required to join in a removal petition, and their citizenship is disregarded for purposes of removal. 28 U.S.C. §1441(a); *Fristos v. Reynolds Metal Company*, 615 F.2d 1209, 1213 (9th Cir. 1980).

IV. DIVISION ASSIGNMENT

13. This matter is properly assigned to either the San Francisco or Oakland Divisions because all of the actions which allegedly give rise to Defendant The Reynolds and Reynolds Company's liability occurred in San Mateo County.

V. AMOUNT IN CONTROVERSY

14. In order to satisfy the \$75,000 amount in controversy requirement, the removing party must demonstrate that the amount in controversy "more likely than not" exceeds \$75,000. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

15. The District Court may consider whether it is facially apparent from the complaint that the jurisdictional amount is met. *Singer v. State Farm Mutual Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997); *Conrad Assoc. v. Hartford Accident & Indemnity Co.*, 994 F. Supp. 1196, 1198 (N.D. Cal. 1998).

16. In the present case, Plaintiff's complaint asserts wrongful termination, retaliation for refusing to waive his rights under California law, violation of California Business and Professions Code sections 17200, et seq., and declaratory relief. He is seeking compensatory, consequential, and special damages, including but not limited to lost earnings and other employment

benefits, costs to seek other employment, and damages for emotional distress. This is sufficient to meet the \$75,000 amount in controversy requirement. William W. Schwarzer, A. Wallace Tashima, and James M. Wagstaffe, Cal. Pract. Guide, Fed. Proc. Before Trial, §2:488, at 2C-82 (2005).

17. In addition to compensatory damages, punitive damages are also properly included in computing the jurisdictional amount. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001). A removing defendant may demonstrate that it is “facially apparent” from the complaint that the claims likely exceed \$75,000, by showing that punitive damages have been plead.

18. Thus, it is apparent from the complaint that the \$75,000 amount in controversy requirement is met. *See Bosinger v. Phillips Plastics Corp.*, 57 F. Supp.2d 986, 989 (S.D. Cal. 1999) (finding federal jurisdiction over matter, noting that since plaintiff had pleaded contract and tort damages, along with punitive damages, the complaint exceeds the jurisdictional amount).

19. Therefore, this action is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and which may be removed by Defendant to this Court pursuant to 28 U.S.C. §§ 1441 and 1446 based on diversity jurisdiction.

20. All pleadings, process or orders received by Defendant in the case are attached hereto. Defendant has received no other process pleadings or orders.

V. NOTICE TO COURT AND PARTIES

21. The day following the filing of this Notice of Removal in the United States District Court for the Northern District of California, written notice of the removal will be given by the undersigned to Plaintiff’s counsel and a copy of this Notice of Removal will be filed with the Clerk of the Superior Court for the State of California, County of San Mateo.

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1 WHEREFORE, Defendant The Reynolds and Reynolds Company prays that the above action
2 now pending against Defendant The Reynolds and Reynolds Company in the Superior Court for the
3 State of California, County of San Mateo, Case Number CIV 462679, be removed to this Court.

4 Dated: June 18, 2007

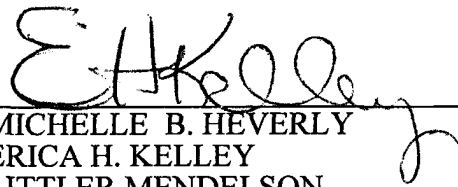
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6 
7 MICHELLE B. HEVERLY
8 ERICA H. KELLEY
9 LITTLER MENDELSON
10 A Professional Corporation
11 Attorneys for Defendant
12 THE REYNOLDS AND REYNOLDS
13 COMPANY
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Exhibit A

ENDORSED FILED
SAN MATEO COUNTY

MAY 1 2007

Clerk of the Superior Court
By A. De Leon
DEPUTY CLERK

DOUGLAS A. KAHN, Bar # 120790
Law Offices of Douglas A. Kahn
1299 Fourth Street, Suite 307
San Rafael, California 94901
Telephone: (415) 460-2888
Facsimile: (415) 460-2730
Email: dougkahn@pacbell.net

Attorney for Plaintiff
FREDERICK H. GREENLEY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

FREDERICK H. GREENLEY,

Plaintiff,

v.

THE REYNOLDS & REYNOLDS
COMPANY, and Does 1 through 20,
inclusive,

Defendants.

Case No.

CW 462679

COMPLAINT FOR DAMAGES.
INCLUDING DECLARATORY
RELIEF, FOR:

1. Wrongful Termination;
2. Retaliation;
3. Cal. Bus. and Prof Code §17200, et seq; and
4. Declaratory Relief

Jury Trial Demanded

1. This action is brought by Plaintiff FREDERICK H. GREENLEY against his former employer who fired him after 25 years of employment for refusing to sign a new employment agreement which illegally mandated that Plaintiff would not compete with the employer for

1 three years following the termination of his employment. This suit alleges the following
2 claims: (1) wrongful termination in violation of public policy; (2) unlawful retaliation for
3 Plaintiff refusing to waive his rights under California law; and (3) violation of Cal. Bus. and
4 Prof. Code §17200, *et seq* (unfair business practices).

6 2. Plaintiff FREDERICK H. GREENLEY ("GREENLEY" or "Plaintiff") is an individual
7 who resides in San Mateo, California.

9 3. Plaintiff GREENLEY was employed by Defendant THE REYNOLDS & REYNOLDS
10 COMPANY and/or its predecessor (hereafter collectively referred to as "REYNOLDS") in
11 San Mateo, California as a Sales Associate from approximately 1982 to March 2, 2007.
12 REYNOLDS makes and sells various customer relations and dealer management software for
13 car dealerships throughout California and around the country. GREENLEY performed all his
14 work for Defendant throughout his employment in Northern California. Plaintiff believes that
15 REYNOLDS has close to a 50% market share of the car dealerships in Northern California.

17 4. Plaintiff GREENLEY is informed and believes that Defendant REYNOLDS is a
18 corporation. It is doing business in San Mateo County. Plaintiff is informed and believes, and
19 on that basis alleges, that each act alleged in this Complaint to have been taken by
20 REYNOLDS or at its direction was taken or authorized by REYNOLDS and its managing
21 agents, and REYNOLDS is thus responsible for each such act.

24 5. Plaintiff sues fictitious Defendants DOES 1 through 20, inclusive, pursuant to Code of
25 Civil Procedure §474, because their names, capacities, and facts showing them liable are not
26 presently known. Each Defendant is sued as the agent or employee of every other Defendant
27 acting within the course and scope of said agency or employment, with the knowledge, consent
28

1 or ratification of said co-Defendants. Each fictitious Defendant is responsible for the acts and
 2 omissions alleged herein.

3 CAUSES OF ACTION

4 FIRST CAUSE OF ACTION

5 **EMPLOYMENT TERMINATION IN VIOLATION OF PUBLIC POLICY** 6 **(Against Defendant REYNOLDS, and Does 1 through 8, inclusive)**

7 6. Plaintiff incorporates each paragraph in this Complaint above as if fully set forth.

8 7. Plaintiff undertook and continued employment and duly and satisfactorily performed all
 9 of the conditions of his employment. Plaintiff has at all times been ready, willing and able to
 10 perform, and has offered to perform, all of the lawful conditions of his employment to be
 11 performed by him.
 12

13 8. On or about February 20, 2007, Defendant REYNOLDS communicated to Plaintiff that he
 14 must sign a written agreement (hereafter "the new agreement") which it wrote and gave to
 15 him.
 16

17 9. Plaintiff is informed and believes that that many of the terms of the new agreement were
 18 violative of public policy in California. Among other terms which were in violation of
 19 California public policy, the new agreement mandated that Plaintiff: 1) not compete with
 20 REYNOLDS for a three-year period after his employment for any reason terminated (this term
 21 included his agreement to not "solicit or accept" business from REYNOLDS customers and to
 22 not directly or indirectly aid any other entity in obtaining business from any customer of
 23 Reynolds); 2) to "not induce or attempt to influence in any way" another employee to leave
 24 employment with Defendants; 3) broadly agree to have "any amounts due Reynolds as a result
 25 of his employment" deducted from his final paycheck (including "charges for Reynolds'
 26
 27
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1 property damaged"); and 4) arbitrate all legal claims between him and REYNOLDS in Ohio
2 (while REYNOLDS retained the right to pursue court action instead of arbitration and to
3 pursue injunctive relief on proscribed unilateral terms).
4

5 10. Plaintiff believed that the terms of the proposed agreement violated the fundamental public
6 policy stated in, among other things, Cal Bus and Prof Code §16600 (e.g., *D'sa v. Playhut* (2000)
7 85 Cal.App.4th 927), Cal. Labor Code §§2802 and 2804, Cal. Labor Code §221 (e.g. *Kerr's*
8 *Catering Service v. Dept of I.R.* (1962) 57 Cal. 2d 319), Cal. Civ. Code §1668, and the
9 protections articulated in, e.g., *Armendariz v. Foundation Health Psychcare Services, Inc.*
10 (2000) 24 Cal.4th 83.
11

12 11. Plaintiff expressed to Defendant his opposition to its demand that he sign the new
13 agreement, including his letting Defendant know his belief that Defendant was asking him to
14 waive his rights under California law. Plaintiff genuinely held this belief.
15

16 12. In response, on or about March 2, 2007, Defendants caused to be sent to Plaintiff a
17 letter stating that, "As you have refused to sign the Employment Agreement recently presented
18 to you, your employment with the Reynolds & Reynolds Company has ended effective
19 immediately". Defendants accordingly fired Plaintiff. Plaintiff believes and alleges that his
20 refusal to sign the proposed employment agreement, along with his expressing his opposition to
21 being asked to waive his rights under California law, is the reason Defendants terminated his
22 employment.
23
24

25 13. As a proximate result of Defendants' conduct, Plaintiff has suffered and continues to
26 suffer substantial losses in back pay, future pay loss, bonuses, health benefits, and other
27 employment benefits which he would have received had Defendants not violated public policy
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1 by firing Plaintiff, all to his damage in an amount according to proof. Plaintiff claims such
2 amount as damages, together with prejudgment interest pursuant to Civil Code §3287 or any
3 other provision of law providing for prejudgment interest.
4

5 14. As a further proximate result of Defendants' conduct as alleged herein, Plaintiff has
6 suffered and continues to suffer mental humiliation, embarrassment, distress, and anguish. As
7 a result of such injuries, Plaintiff has incurred damages in an amount exceeding the minimum
8 jurisdiction of this Court and to be proven at trial.
9

10 15. Defendants committed the acts alleged herein despicably, maliciously, fraudulently, and
11 oppressively with the wrongful intention of injuring Plaintiff and acted with an improper and
12 evil motive amounting to malice and in conscious disregard of Plaintiff's rights. Because the
13 acts taken towards Plaintiff were carried out in a despicable, deliberate, cold, callous, and
14 intentional manner with malice in order to injure and damage Plaintiff, he is entitled to recover
15 punitive damages from Defendants in an amount according to proof. To the extent that such
16 conduct was engaged in by employees or agents of Defendants, Defendants authorized or
17 ratified the conduct or was itself guilty of such conduct. Plaintiff requests the assessment of
18 punitive damages against Defendants, and each of them.
19
20

21 16. Wherefore, Plaintiff asks for an award of monetary damages against Defendants as set
22 forth below.
23

24 **SECOND CAUSE OF ACTION**
25 **UNLAWFUL RETALIATION**
26 **(Against Defendant REYNOLDS and**
27 **Does 3 THROUGH 10, inclusive)**
28

17. Plaintiff incorporates each paragraph in this Complaint above as if fully set forth.

1 18. Plaintiff was retaliated against in the terms and conditions of his employment as a direct
2 consequence of his opposing Defendants' attempt to force him to waive his rights under
3 California law, as set forth above. The letter terminating his employment sets forth the
4 unlawful motive for Defendant firing him: to punish him for opposing and refusing to sign
5 what he genuinely believed to be an unlawful employment agreement.
6

7 19. As a proximate result of Defendants' conduct, Plaintiff has suffered and continues to
8 suffer substantial losses in back pay, future pay loss, bonuses, health benefits, and other
9 employment benefits which he would have received had Defendants not unlawfully retaliated
10 against him by firing him, all to his damage in an amount according to proof. Plaintiff claims
11 such amount as damages, together with prejudgment interest pursuant to Civil Code §3287 or
12 any other provision of law providing for prejudgment interest.
13
14

15 20. As a further proximate result of Defendants' conduct as alleged herein, Plaintiff has
16 suffered and continues to suffer mental humiliation, embarrassment, distress, and anguish. As
17 a result of such injuries, Plaintiff has incurred damages in an amount exceeding the minimum
18 jurisdiction of this Court and to be proven at trial.
19

20 21. Defendants committed the acts alleged herein despicably, maliciously, fraudulently, and
21 oppressively with the wrongful intention of injuring Plaintiff and acted with an improper and
22 evil motive amounting to malice and in conscious disregard of Plaintiff's rights. Because the
23 acts taken towards Plaintiff were carried out in a despicable, deliberate, cold, callous, and
24 intentional manner with malice in order to injure and damage Plaintiff, he is entitled to recover
25 punitive damages from Defendants in an amount according to proof. To the extent that such
26 conduct was engaged in by employees or agents of Defendants, Defendants authorized or
27
28

1 ratified the conduct or was itself guilty of such conduct. Plaintiff requests the assessment of
2 punitive damages against Defendants, and each of them.

3
4 22. Wherefore, Plaintiff asks for an award of monetary damages against Defendants as set
5 forth below

6 **THIRD CAUSE OF ACTION**
7 **UNFAIR COMPETITION PURSUANT TO**
8 **BUSINESS AND PROFESSIONS CODE §§17200-17208**
9 **(Against Defendant REYNOLDS AND Does 5 – 15)**

10 23. Plaintiff incorporates each paragraph in this Complaint above as if fully set forth.

11 24. Plaintiff has been personally injured and brings this claim pursuant to California Business
12 and Professions Code §17200, *et seq.* The conduct of all Defendants as alleged in this
13 complaint has been and continues to be unfair, unlawful and harmful to Plaintiff, to those
14 similarly situated, and to the general public. Plaintiff seeks to enforce important rights
15 affecting the public interest within the meaning of Code of Civil Procedure §1021.5.
16

17 25. Plaintiff is a "person" within the meaning of Business and Professions Code §17204 who
18 has suffered an injury in fact as a result of Defendants' unfair competition.
19

20 26. Business and Professions Code §17200 *et seq.* prohibits unlawful, unfair and fraudulent
21 business practices.
22

23 27. Through the conduct alleged in this complaint, Defendants, and each of them, have acted
24 contrary to the public policy in California of enabling fair competition, and have engaged in
25 other unlawful and unfair business practices in violation of Business and Professions Code
26 §17200, *et seq.*, depriving Plaintiff, persons similarly situated, and interested persons of
27 rights, benefits and privileges guaranteed under the law.
28

1 28. Defendants have committed unfair and unlawful business practices within the meaning of
2 Business and Professions Code §17200, *et seq.* by engaging in conduct that includes, but is not
3 limited to requiring Plaintiff (and other similarly situated employees) to waive their rights to
4 fairly compete under Cal. Bus. Code §16600, wrongfully discharging Plaintiff (and others
5 similarly situated) for refusing to sign agreements promising not to compete, and taking other
6 acts to discourage or stop former employees from competing fairly with REYNOLDS.
7

8
9 29. Plaintiff reserves the right to identify additional unfair and unlawful practices by
10 defendants as further investigation and discovery warrants.

11 30 Plaintiff is informed and believes and thereon alleges that at all times material to this
12 action, Defendants' conduct has injured the interest of the plaintiff and the general public in
13 that:
14

- 15 a) Each member of the general public that sells software similar to that sold by
16 Defendants, and who is attempting to do so in honest compliance with
17 applicable California law, including the laws violated by the Defendants, is at
18 an unfair competitive disadvantage as a result of Defendants' conduct;
19
20 b) Defendants have done these acts for the purpose of injuring competitors
21 and/or destroying competition, in violation of Business and Professions Code
22 §17040, *et al*;
23
24 c) At all times material to this action, Defendants' conduct has resulted in
25 economic loss to Plaintiff and to the general public which purchases or would
26 otherwise purchase software similar to that sold by Defendants.
27

28 31. As a direct result of unfair, unlawful, unscrupulous, and anti-competitive conduct alleged

1 in this complaint. Defendants, and each of them, have acted contrary to law and contrary to
2 public policy and have thus engaged in unlawful and unfair business practices in violation of
3 Business and Professions Code §17200 *et seq.* Defendants have engaged in such conduct for
4 their own economic self-interest, to increase their profits. Through their unfair business
5 practices alleged herein, Defendants have received and retained and continue to receive and
6 retain funds that rightfully belong to Plaintiff, and those similarly situated, and have produced
7 further profits and those funds. As a result, defendants have been unjustly enriched and have
8 achieved an unfair competitive advantage over their legitimate business competitors at the
9 expense of the plaintiff, the defendants' employees, and the public at large. Plaintiff is entitled
10 to and does seek all relief as may be necessary to restore to Plaintiff all money and property
11 which Defendants have acquired, or of which Plaintiff and effected others have been deprived,
12 by means of Defendants' unfair and unlawful business practices, and to restore to Plaintiff the
13 ill-gotten gains obtained by defendants through those practices.

14 32. Business and Professions Code §17203 provides that the Court may restore to an
15 aggrieved party any money or property acquired by means of unlawful and unfair business
16 practices. Plaintiff seeks restitution of all wages he would have otherwise earned according to
17 proof, and further seeks declaratory relief described herein. Plaintiff is also entitled to enforce
18 any and all available penalties flowing from Defendants' foregoing violations, in the amount to
19 be proven at trial, pursuant to Business and Professions Code §17202, *et al.*

20 33. Failure to enforce the penalties due as alleged herein would result in the unlawful
21 enrichment of Defendants and would promote unfair competition.
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**FOURTH CAUSE OF ACTION
DECLARATORY RELIEF
(Against Defendant REYNOLDS, and Does 2 through 20, inclusive)**

34. Plaintiff incorporates each paragraph in this Complaint above as if fully set forth.

35. On or about 2001, Plaintiff entered into a written agreement with Defendant REYNOLDS. This agreement (hereafter referred to as "the 2001 agreement") contained a non-compete provision, which by its terms is in effect for a period of one-year following his employment termination (whether or not for cause). The provision states that Plaintiff can not "call upon, solicit, take away, accept, or attempt to do business with" in the United States any of Defendants' customers which in the last year of his employment he contacted, received a commission for, or learned or had access to confidential information on.

36. The 2001 agreement also contained a provision in which Plaintiff "waives all rights under California Business and Professional Code sect 16600, and any ... common law principle of similar effect, including any public policy claims arising under section 16600".

37. The 2001 agreement also purports to force Plaintiff to litigate in Ohio "all questions relative to the interpretation and construction" of the 2001 agreement.

38. Plaintiff seeks a declaration from the Court that these provisions of the 2001 agreement specified above in this cause of action are invalid, unenforceable, and are otherwise against public policy in California, and that this Court properly has jurisdiction to make a binding ruling on these issues. These provisions of the 2001 agreement are counter to California law, including but not limited to the public policy contained in Cal Bus and Prof Code §16600 (e.g., *D'sa v. Playhut* (2000) 85 Cal.App.4th 927) and Cal. Civ. Code section 1668.

1 39. Such declaratory relief is needed as Plaintiff, who is now unemployed due to his being
2 fired by REYNOLDS, wants to continue to work in the industry in which he has been engaged
3 in the last 25 years, and desires to work in the Northern California territory where he lives and
4 has worked in the last 25 years. He wants to be able to fairly compete with REYNOLDS.
5 including being able to solicit and accept business from REYNOLDS customers. Such
6 customers represent a significant percentage of all potential customers in Plaintiff's industry.
7 Without the declaratory relief requested by Plaintiff in this cause of action, he will be in
8 constant jeopardy of potentially violating the written terms of the 2001 agreement (which
9 agreement includes a written provision that he is "responsible for attorneys' fees and other
10 legal expenses incurred by Reynolds or its successors and assigns to enforce any of the
11 covenants of this agreement"). Plaintiff can not bear this potential liability, and so is
12 effectively precluded from working in his industry. He thus asks the Court to adjudge and
13 declare his legal rights and duties under his written 2001 agreement.
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19 **WHEREFORE**, Plaintiff GREENLEY requests that:

- 20 1) Defendants be cited to appear and answer this Complaint;
- 21 2) Plaintiff be awarded economic, non-economic, general, emotional distress, and
22 punitive damages, together with interest provided by law;
- 23 3) The Court grant Plaintiff's requested declaratory relief;
- 24 4) The Court award restitution of all profits acquired by means of any unfair business
25 practice and all penalties;
- 26 5) Prejudgment and post-judgment interest;
- 27 6) The Court award Plaintiff costs of suit;
- 28

- 1
- 2 7) The Court award Plaintiff reasonable attorneys' fees per the provisions of the
- 3 contractual agreements between Plaintiff and Defendants, per Cal. Code Civ. Pro.
- 4 Sect 1021.5, per Cal. Bus. and Prof. Code §17200, *et seq*, and per other applicable
- 5 law; and
- 6 8) The Court award Plaintiff any further relief that may be deemed just and equitable.

7


8 Plaintiff hereby demands a jury trial.

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12 Dated: 4/26/07


Douglas Kahn
Attorney for Plaintiff Frederick H. Greenley

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Exhibit B

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

THE REYNOLDS & REYNOLDS COMPANY, and DOES 1 through 20,
inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):
FREDERICK H. GREENLEY

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED FILED
SAN MATEO COUNTY

MAY 1 2007

Clerk of the Superior Court

By A. De Leon

DEPUTY CLERK

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Mateo Superior Court, Unlimited Jurisdiction
800 North Humboldt Street
San Mateo, California 94401-1499

CASE NUMBER **CV 462679**
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Douglas A. Kahn 1299 Fourth Street, Suite (415) 460-2888
Law Offices of Douglas A. Kahn San Rafael, California 94901

JOHN C. FITTON

A. De LEON

DATE:

(Fecha) **MAY 1 2007**

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

Page 1 of 1

LAW OFFICES OF DOUGLAS A. KAHN

1299 Fourth Street, Suite 307
San Rafael, California 94901

177 Post Street, Penthouse
San Francisco, California 94108

Please reply to: ☒

☐

Telephone: (415) 460-2888

Facsimile: (415) 460-2730

email: douglaskahn@pacbell.net

May 7, 2007

PERSONAL and CONFIDENTIAL

Via Certified Mail

7005 3110 0003 3572 4320

Mr. Finbarr J. O'Neill
Vice Chairman of the Office of the CEO
The Reynolds & Reynolds Company
One Reynolds Way
Kettering, Ohio 45430

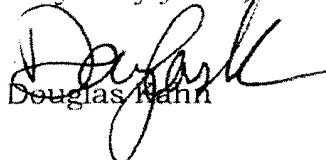
Re: *Greenley v. Reynolds & Reynolds*
San Mateo County Sup. Ct. Case No. CIV462679

Dear Mr. O'Neill,

Pursuant to Cal. Code Civ. Pro. §416.10, as an officer of Defendant The Reynolds & Reynolds Company you are hereby being served on behalf of the company with the enclosed Summons and Complaint in the above-referenced case.

If you would like to discuss resolution of these claims before litigation commences in earnest, please have your attorneys contact me.

Very truly yours,


Douglas Kahn

DAK:cs
Enclosures

Exhibit C

MICHELLE B. HEVERLY, Bar No. 178660
ERICA H. KELLEY, Bar No. 221702
LITTLER MENDELSON
A Professional Corporation
50 West San Fernando Street
14th Floor
San Jose, CA 95113.2303
Telephone: 408.998.4150

Attorneys for Defendant
THE REYNOLDS AND REYNOLDS COMPANY

ENDORSED FILED
SAN MATEO COUNTY
JUN 18 2007

Clk of the Superior Court
By DANIEL SHEA
DEPUTY CLERK

FILED
SAN MATEO COUNTY
JUN 18 2007

Clk of the Superior Court
By DANIEL SHEA
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

Frederick H. Greenley,

Plaintiff,

v.

The Reynolds & Reynolds Company, and
Does 1 through 20, inclusive,

Defendant.

Case No. CIV 462679

**DEFENDANT THE REYNOLDS AND
REYNOLDS COMPANY'S GENERAL
DENIAL AND AFFIRMATIVE DEFENSES**

GENERAL DENIAL

Pursuant to California Code of Civil Procedure, section 431.30(d), Defendant The Reynolds and Reynolds Company generally denies each and every allegation of Plaintiff's unverified Complaint, and further denies that Plaintiff has been injured in the amount or manner alleged or in any other amount or manner. Wherefore, Defendant prays judgment as hereafter set forth.

Defendant states the following as separate affirmative defenses:

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, The Reynolds and Reynolds Company ("Defendant") alleges:

That Plaintiff's Complaint fails to allege facts sufficient to constitute any cause of

1 action or to set forth a claim upon which relief can be granted.

2 AS AND FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO
3 EACH CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant alleges:

4 That Plaintiff's claims are barred by the applicable statutes of limitations, including
5 California Code of Civil Procedure § 335.1 and California Government Code §§ 12960 and 12965.

6 AS AND FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH
7 CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant alleges:

8 That Plaintiff is estopped by reason of his conduct, acts, or omissions, from
9 recovering against Defendant on any purported claims for relief contained in the Complaint.

10 AS AND FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
11 EACH CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant alleges:

12 That all damages Plaintiff has suffered are wholly or in part the result of his own
13 actions, or the actions of other parties, not the answering Defendant.

14 AS AND FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH
15 CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant alleges:

16 That Plaintiff could have, through diligence, found other employment and taken other
17 action which would have mitigated his damages, and he had an affirmative duty to do so, which was
18 breached by his failure to find other employment and take other action upon the cessation of his
19 employment with Defendant.

20 AS AND FOR A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH
21 CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant alleges:

22 That to the extent during the course of this litigation Defendant acquires any evidence
23 of wrongdoing by Plaintiff and the wrongdoing would have materially affected the terms and
24 conditions of Plaintiff's employment or would have resulted in Plaintiff either being demoted,
25 disciplined, or terminated, such after-acquired evidence shall bar Plaintiff's claim on liability or
26 damages or shall reduce such claim or damages as provided by law.

27 AS AND FOR A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
28 EACH CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant alleges:

1 That all actions taken by Defendant were required by business necessity and were
2 therefore justified.

3 AS AND FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
4 EACH CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant alleges:

5 That each and every act done by Defendant with regard to, or in any way related to,
6 Plaintiff's employment with Defendant was privileged as a good faith assertion of Defendant's legal
7 and contractual rights.

8 AS AND FOR A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH
9 CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant alleges:

10 That Plaintiff has failed to exhaust his administrative remedies, the exhaustion of
11 which is a condition precedent to the maintenance of those causes of action.

12 AS AND FOR A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
13 EACH CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant alleges:

14 That Plaintiff, by his own acts and omissions, is barred from recovery under the
15 doctrine of waiver.

16 AS AND FOR A ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
17 EACH CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant alleges:

18 That Plaintiff did not suffer any adverse employment actions as a matter of law, and
19 that any and all employment decisions made with regard to Plaintiff were for legitimate, non-
20 retaliatory business reasons.

21 AS AND FOR A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
22 EACH CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant alleges:

23 That the allegations contained in the Plaintiff's Complaint fail to state facts sufficient
24 to constitute a claim upon which punitive damages may be sought.

25 Defendant has not yet completed a thorough investigation and study or completed
26 discovery of all facts and circumstances of the subject matter of Plaintiff's Complaint and,
27 accordingly, reserve its right to amend, modify, revise or supplement its Answer, and to plead such
28 further defenses and take such further actions as they may deem proper and necessary in its defense

1 upon the completion of said investigation and study.


2 WHEREFORE, Defendant prays judgment against Plaintiff as follows:

3 1. For an order dismissing Plaintiff's claims with prejudice, and entering
4 judgment in favor of Defendant and against Plaintiff;

5 2. For all reasonable costs and attorneys' fees incurred by Defendant in
6 connection with the defense of this matter; and

7 3. For such other and further relief as the Court in the exercise of its discretion
8 deems just and proper.

9
10
11 Dated: June 18, 2007

12
13  for
14 MICHELLE B. HEVERLY
15 ERICA H. KELLEY
16 LITTLER MENDELSON
17 A Professional Corporation
18 Attorneys for Defendant
19 THE REYNOLDS AND REYNOLDS
20 COMPANY
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28

PROOF OF SERVICE BY MAIL

I am employed in Santa Clara County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 50 West San Fernando Street, 14th Floor, San Jose, California 95113.2303. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On June 18, 2007, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**DEFENDANT THE REYNOLDS AND REYNOLDS
COMPANY'S GENERAL DENIAL AND AFFIRMATIVE
DEFENSES**

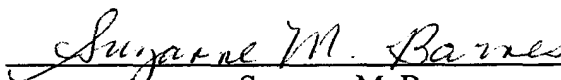
in a sealed envelope, postage fully paid, addressed as follows:

Douglas A. Kahn
Law Offices of Douglas A. Kahn
1299 Fourth Street, Suite 307
San Rafael, CA 94901
Attorneys for Plaintiff

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 18, 2007, at San Jose, California.


Suzanne M. Barnes